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 **Global Crossing**

January 18, 2000

BY OVERNIGHT MAIL

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-A306
Washington, D.C. 20554

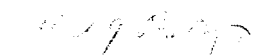
Re: CC Docket No. 96-98

Dear Ms. Salas:

Enclosed for filing please find an original plus seven (7) copies of the Comments of Global Crossing Telecommunications, Inc. in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed self-addressed envelope.

Very truly yours,



Michael J. Shortley, III

cc: International Transcription Service (paper plus diskette)

Ms. Jodie Donovan-May (paper plus diskette)

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**Implementation of the Local
Competition Provisions of the
Telecommunications Act of 1996**

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CC Docket No. 96-98

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**COMMENTS OF GLOBAL CROSSING
TELECOMMUNICATIONS, INC.**

Global Crossing Telecommunications, Inc. ("Global Crossing") submits these comments in response to the Commission's Fourth Further Notice¹ in this proceeding. The Commission has requested comment upon whether there is any basis under which the Commission may place a restriction on the use of entrance facilities and whether incumbent local exchange carriers ("LECs") should provide entrance facilities as unbundled network elements ("UNEs").² The Commission should classify entrance facilities as UNEs and decline to place restrictions on their use.

As a matter of statutory interpretation, the Commission has already answered the questions that it poses. In the Third Report and Order, the Commission concluded:

we clarify that interexchange carriers are entitled to use unbundled dedicated transport from their POPs to a serving wire center in order to provide local telephone exchange service. Such carriers are entitled to obtain such dedicated transport links

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Dkt. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, ¶¶ 492-96 (Nov. 5, 1999) ("Fourth Further Notice").

² *Id.*, ¶ 495.

pursuant to the unbundling standard discussed above. The fact that such carriers may also provide exchange access over those facilities does not alter our conclusion.³

Entrance facilities consist of no more than dedicated transport links that already must be offered as unbundled network elements. Thus, the Commission has already answered the fundamental question that it posed, namely, whether entrance facilities (*i.e.*, dedicated transport) must be offered on an unbundled basis pursuant to section 251.

The Commission has also answered the ancillary question that it raises, namely, whether it may or should impose usage restrictions on entrance facilities.

The Commission concluded:

Section 251(c)(3) of the Act requires incumbent LECs to provide to requesting carriers access to unbundled network elements "for the provision of a telecommunications service..." In particular, the Commission found that its conclusion not to impose usage restrictions on the use of unbundled network elements was "compelled by the plain language of the 1996 Act" because exchange access and interexchange services are "telecommunications services"...The conclusion that the Act does not permit usage restrictions was codified in Rule 51.309(a), which provides that "(a)n incumbent LEC shall not impose limitations, restrictions or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends." The rule was not challenged in court by any party.⁴

³ *Id.*, ¶ 488.

⁴ *Id.*, ¶ 484.

Based upon the Commission's own prior determinations, there is no basis for the Commission to conclude that the just and reasonable provisions of sections 251(c) and 251(g) permit it to impose usage restrictions on entrance facilities. Even a cursory review of sections 251(c) and 251(g) confirm this conclusion. The "just and reasonable" language of section 251 requires incumbent LECs to provide interconnection on terms that are "just, reasonable and nondiscriminatory."⁵ That language is contained in a section of the statute entitled "Additional obligations of incumbent local exchange carriers." There is no suggestion that the "just and reasonable" language is intended to act as limitation on the general interconnection duty of incumbent LECs. It merely requires incumbent LECs to offer interconnection on terms that do not disadvantage requesting carriers.

Similarly section 251(g) requires incumbent LECs to continue to offer exchange access and similar arrangements that existed prior to passage of the 1996 Act. It does not purport to limit the Commission's ability to establish UNEs or authorize the Commission to establish usage restrictions on UNEs.

The argument that such a restriction is justified because the absence of such a restriction would "provide opportunities for arbitrage of special access services,"⁶ is time-worn at best. The Commission has long recognized that usage restrictions are virtually *per se* unlawful.⁷ There is no reason for the

⁵ 47 U.S.C. § 251(c)(2)(B).

⁶ *Id.*, ¶ 494.

⁷ See, e.g., *Resale and Shared Use of Common Carrier Services and Facilities*, 60 FCC 2d 261, 263 (1976).

Commission to revisit this unbroken string of precedent, particularly in the context of special access services.

The Commission appears concerned by the implications of a "significant reduction in special access revenues for our universal service program."⁸ There is no such legitimate concern. *First*, rates for special access services do not contain the level implicit subsidies that are found in switched access rates. Thus, even if special access revenues are reduced, subsidies would not be reduced accordingly.

Second, the specter of a "large financial impact on incumbent local exchange carriers"⁹ is vastly overstated. Special access revenues account for only a relatively small proportion of interstate access revenues. Moreover, if requesting carriers are able to substitute unbundled network elements for special access, incumbent LECs will realize revenues from those unbundled network elements.

⁸ Fourth Further Notice, ¶ 496.

⁹ *Id.*, ¶ 496.

For the foregoing reasons, the Commission should act on the proposals contained in the Fourth Further Notice in the manner suggested herein.

Respectfully submitted,



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